

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| New Part 4 of the Commission's Rules |) | |
| Concerning Disruptions to Communications |) | ET Docket No. 04-35 |

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ submits these comments on the Further Notice of Proposed Rulemaking (FNPRM)² published by the Federal Communications Commission (FCC or Commission) in the Federal Register on November 26, 2004, regarding new part four rules regarding disruptions to communications. The FNPRM stems from the Commission's request to expand the record in the Service Disruption Report & Order to focus on additional requirements related to the filing of service disruption reports resulting from outages affecting airport communications.

INTRODUCTION

The Commission's Service Disruption Order adopted a number of new reporting obligations for wireline, wireless, satellite and cable companies. In addition, the Commission published an FNPRM seeking comment on additional airport communication technologies, including wireless and satellite, that should be subject to outage reporting. According to the Commission this may include, "communications that

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report & Order and Further Notice of Proposed Rulemaking*, ET Docket No. 04-35, (Rel. August 19, 2004) (Service Disruption Order or FNPRM).

are provided by ARINC as well as commercial communications (*e.g.* air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links.”³

The Commission also seeks comment on whether outage reporting should be extended to general aviation airports and, if so, what the reporting threshold criteria should be.

Requiring outage reporting for all general aviation airports is excessive and burdensome without a countervailing public benefit. The Commission’s recently adopted outage reporting rules require priority reporting for the nation’s 806 primary, commercial service, and reliever airports. As demonstrated below, this reporting will capture nearly 100% of enplanements at airports throughout the country. Requiring the reporting of thousands of additional airports will force USTA members to expend capital and human resources to prepare to report outages, that may or may not occur, at extremely small airports that handle an infinitesimal amount of airplane traffic. Moreover, general aviation airports have unique characteristics that actually lessen the threat to national security. For example, many general aviation airports have grass runways and can only accommodate aircraft weighing less than 1,500 pounds. It is not necessary to require carriers to assign priority outage reporting to airports that are not a threat to national security.

General aviation airports often have no control tower, no terminal and very few employees. Small, private planes take off and land with little, to no, notice. Thus, the reporting of an outage does nothing to prevent terrorist activity at these small airports. It is difficult to rationalize the Commission’s argument that outage reporting will strengthen homeland security, when an airport does not have a control tower. Moreover, it is

³ Service Disruption Order, ¶ 67.

difficult for the Commission to justify its concerns about general aviation airports when the overwhelming majority of planes that service these airports also can take off and land from private dirt or grass runways.

USTA also urges the Commission to clarify that the obligation to report outages at airports that last 30 minutes is only applicable to outages affecting air traffic control communications. This reporting requirement should not be expanded to commercial or retail facilities located at an airport.

DISCUSSION

1. Requiring Reports To Be Filed For Service Disruptions Affecting All Airports Is Excessive

Recently revised part four rules require the reporting of outages of at least 30 minutes that potentially affect special offices and facilities, which include airports, major military installations, key government facilities, and nuclear power plants.⁴ The FCC proposes to change this requirement to make it applicable to all airports, not just major airports.

According to the Commission, there are 2,558 general aviation airports, in addition to 806 primary, commercial service, and reliever airports.⁵ Therefore, the Commission is contemplating receiving outage reports for more than 3,000 airports, of which the vast majority “are airports that do not receive scheduled commercial service.”⁶ USTA questions the need to require carriers to expend capital dollars to install and update reporting systems to capture and report outages on 2,558 airports of extremely questionable quality, size and use.

⁴ See 47 C.F.R. § 4.5(b).

⁵ See Service Disruption Order, ¶ 65.

⁶ *Id.*

USTA refers the Commission to the Federal Aviation Administration's (FAA) National Plan of Integrated Airport Systems (2005-2009) (NPIAS) which was recently released to Congress on September 30, 2004.⁷ The NPIAS identifies airports, based on select criteria, that are eligible to receive grants under the FAA's Air Improvement Program. The 2005 NPIAS report identifies 136 large, medium and small hub primary airports; 247 non-hub primary airports; 127 non-primary commercial service airports; and 278 reliever airports, for a total of 788 airports subject to the Commission's new reporting rules. The NPIAS report identifies 2,556 general aviation airports. (USTA notes that the Commission, in issuing its final order, relied upon the 2001 NPIAS report).⁸ The Commission should amend its existing rule to reflect the 788 primary, commercial and reliever airports identified by the FAA, not the 806 airports as new part four currently provides.

According to the 2005 NPIAS report, these 788 airports handle 99.89% of all enplanements in the United States; the 2,556 general aviation airports account for 0.06% of all enplanements nationwide.⁹ The latter are rural airports that do not handle regularly scheduled commercial service.¹⁰ Therefore, USTA questions the rationale for requiring priority reporting for airports that are unlikely to have the runway or terminal capabilities to handle the large, commercial jets that pose the greatest threat to homeland security. To date, the Transportation Security Administration (TSA) has not required general aviation airports to implement security measures and has not conducted "an overall, systematic

⁷ See <http://www.faa.gov/arp/planning/npas/npas2005/NPIAS2005Narr.pdf>

⁸ See Service Disruption Order, ¶ 65.

⁹ See NPIAS at 6.

¹⁰ See *Id.* at 8.

assessment of threat to or vulnerabilities of” general aviation airports.¹¹ TSA and the Federal Aviation Administration (FAA) have not taken a position that general aviation airports, and aircraft that use them, are a threat to homeland security. In fact, TSA has concluded “the small size, lack of fuel capacity and minimal destructive power of most general aviation aircraft make them unattractive to terrorist and, thereby, reduce the possibility of threat associated with their misuse.”¹² USTA is not aware of any vulnerability assessments conducted by the FCC on general aviation airports; nor has the Commission introduced any evidence that contradicts TSA’s conclusions. USTA questions the Commission’s rush to mandate expenditures and reporting for a threat that has not been defined or identified by TSA or FAA -- the regulatory agencies with the expertise and responsibility for general aviation security.

The predominate number of general aviation airports are located in rural areas and serve small, privately owned aircraft. USTA’s small, rural members will be most impacted by this expanded reporting requirement. USTA questions the public benefit of requiring small, rural carriers to expend resources to hire and train additional staff and update network operations systems to monitor 24x7 outage reporting for airports that may only be used on a weekly basis. More importantly, outage reporting will not forestall a terrorist attack originating from a general aviation airport. USTA urges the Commission to limit reporting to only the 788 airports as defined in the new part four rules, and as currently identified by the FAA in its 2005 National Plan of Integrated Airport Systems.

¹¹ General Aviation Security, Report to the Subcommittee on Homeland Security, Committee on Appropriations, House of Representatives, United States Government Accountability Office, at pp. 15 and 24 (GAO-05-144) (Nov. 2004).

¹² *Id.* at 15-16.

2. Requiring Outage Reports For Service Disruptions Affecting All Airport Communication Circuits Is Excessive.

Section 63.100(a)(6) of the previous outage reporting rules limited reporting to outages that disrupted 50% or more of the air traffic control links or “other FAA communications links to an airport.” This limitation has not been incorporated into the Commission’s new part four rules. The Commission has not offered any rationale for why it has removed the 63.100(a)(6) limitation. Moreover, the Commission’s new rules and its FNPRM are vague as to whether service disruptions lasting 30 minutes, which affect all airport circuits, including retail outlets, must be reported or whether only service disruptions lasting 30 minutes to critical FAA circuits must be reported. USTA urges the FCC to include the 63.100(a)(6) language that limited reporting airport outages to only air traffic control or “other FAA communications links” in its new part four rules.

Reporting should be limited to only those outages deemed “air traffic impacting,” as described in the recommendation made in the NRIC VI Focus Group 2 Report. According to this report, an outage is “air traffic impacting” when it involves the loss of greater than 50 percent of telecommunication services at a critical air-traffic-control facility¹³ and affects the ability of the air traffic facility to control air traffic, as determined by the FAA air-traffic supervisor at the air-traffic-systems command center. This may include loss of critical telecommunications services that transmit radar data, flight-plan data or controller-to-pilot and controller-to-controller voice.¹⁴

All other outages affecting airport circuits should not be subject to the 30 minute threshold criteria. These outages will be captured by the Commission’s new common

¹³ Air-traffic control facilities include airports, terminal radar approach control, air traffic control towers, or an FAA air-route-traffic-control center.

¹⁴ See http://www.nric.org/fg/charter_vi/fg2/FG_2_Final_Report_ver_120103.doc at 45.

metric. It is unnecessarily burdensome and costly for carriers to report outages affecting magazine stands and food stalls. Using the veil of national security to justify reporting outages lasting 30 minutes affecting an airport's Starbucks is dubious.

3. The Commission's Initial Regulatory Flexibility Analysis Is Flawed.

In the November 26, 2004 Federal Register proposal, the Commission notices its Initial Regulatory Flexibility Analysis (IRFA). According to the IRFA, the Commission predicts that the sum of outage reports it will receive from all service providers (i.e., wireline, wireless, satellite and cable) as a result of all new reporting requirements "will be substantially less than 1,000 annually."¹⁵ USTA questions the validity of this number and is at a loss as to why the Commission has not attempted to define with specificity the impact of additional airport reporting requirements.

The Commission's continued use of the generic "1,000 annually" figure is puzzling. The Commission used that figure when defining the impact of its new service disruption rules issued on August 19, 2004. Now, however, the Commission is contemplating requiring reporting for more than 3,000 airports nationwide using an ill-defined threshold criteria as to what circuits are subject to the 30 minute threshold criteria. In addition, the Commission is seeking to determine whether it should also require wireless and satellite providers to report airport outages. As a result, this proposal has the potential to inundate the Commission with more outage reports. Yet, the figures presented in the IRFA, are the same figures that were presented in the Commission's original service disruption proposal IRFA dated February 23, 2004. USTA questions

¹⁵ Service Disruption Order, ¶ 168.

why the Commission has not developed a new IRFA with figures specifically related to additional airport outage reporting.

CONCLUSION

For the foregoing reasons, USTA urges the FCC to restrict service disruption reporting to the 788 primary (including hubs), commercial service and reliever airports as currently required under new part four rules. USTA questions the value of the 30 minute threshold criteria for all general aviation airports and urges the Commission to exclude these airports from the 30 minute threshold criteria. The Commission should also limit the 30 minute threshold criteria to only FAA or air traffic control critical circuits at an airport. All other circuits on airport property should be subject to the Commission's common metric under new part four rules. Finally, USTA questions the validity of the Commission's Initial Regulatory Flexibility Analysis.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

David Kanupke
Director, National Security, Environment and Safety

and

James W. Olson
Indra Sehdev Chalk
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7300

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on January 25, 2005, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

Les Smith
Federal Communications Commission
Room 1-CA804
445 12th Street, S.W.
Washington, DC 20554
Leslie.Smith@fcc.gov

Kristy L. LaLonde
OMB Desk Officer
Room 10234 NEOB
725 17th Street, N.W.
Washington, DC 20503
LaLonde@omb.eop.gov

BCPI
Portals II
445 12th Street, SW
CY-B402
Washington, DC 20554
qualexint@aol.com

By: _____/s/_____

Meena Joshi